



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Agriculture

- ☒ Preproposal Statement of Inquiry was filed as WSR 05-04-078; or
☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

Title of rule and other identifying information:

The department is proposing to repeal chapter 16-239 WAC (WSDA grain inspection program -- Definitions, standards, fees and charges) and replace it with chapter 16-240 WAC (WSDA grain inspection program -- Definitions, standards, and fees), which is written in a clear and readable style and format. The proposed new chapter:

- Simplifies grain inspection fees by deleting many minor fee categories.
- Changes the calculation of inspection fees assessed by the ton from a short-ton fee basis (2000 pounds) to a metric-ton fee basis (2204.6 pounds).
- Increases some line item fees in excess of the fiscal growth factor.

Hearing location(s):

Washington State Department of Agriculture
Natural Resources Building, Conference Room 271
1111 Washington Street S.E.
Olympia, Washington 98504-2560

Date: Thursday, April 28, 2005 Time: 1:30 p.m.

Submit written comments to:

Name: Randy Deike, Grain Inspection Program Manager
Commodity Inspection Division

Address: P.O. Box 42560
Olympia, WA 98504-2560

e-mail rdeike@agr.wa.gov

fax 360-902-2085 by Thursday, April 28, 2005, 5:00 p.m.

Assistance for persons with disabilities:

Contact: Virginia Walsh by April 22, 2005

TTY 360-902-1976 or 360-902-1996

Date of intended adoption: May 17, 2005

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Please see attachment.

Reasons supporting proposal:

Please see attachment.

Statutory authority for adoption:

Chapter 25, Laws of 2003, 2003 1st Special Session,
Section 309, Subsection (2); Chapter 22.09.790 RCW; and
Chapter 34.05 RCW.

Statute being implemented:

Chapter 22.09 RCW

Is rule necessary because of a:

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

MAR 22 2005

855

TIME

WSR

05-07-120

PM

DATE

March 22, 2005

NAME (type or print)

Robert W. Gore

SIGNATURE**TITLE**

Assistant Director

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization)

Washington State Department of Agriculture

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Randall R. Deike	1111 Washington Street S.E., Olympia, WA 98504	360-902-1921
Implementation..... Randall R. Deike	1111 Washington Street S.E., Olympia, WA 98504	360-902-1921
Enforcement..... Randall R. Deike	1111 Washington Street S.E., Olympia, WA 98504	360-902-1921

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared.

RCW 19.85.030(1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor costs on businesses in an industry. The department surveyed seventy-two entities affected by the proposed amended fee schedules. Nineteen entities responded to the survey with three surveys returned as undeliverable. The response rate was 27.5 percent (19/69). All respondents were "small businesses" as defined by RCW 19.85.020(1). Based upon the responses received, the new costs imposed by the proposed fee schedules are \$00.03 per \$100 of sales (.0003 percent). The department has concluded that such an increase does not impose a "more than minor impact" upon the regulated industry. Therefore, a formal SBEIS is not required.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No: Please explain:

Washington State Department of Agriculture is not a named agency in RCW 34.05.328.

Title of proposed rule:

WSDA proposes repealing the current Chapter 16-239 WAC, WSDA Grain Inspection Program—Definitions, Standards, Fees and Charges, and replacing it with new Chapter 16-240 WAC, **WSDA Grain Inspection Program—Definitions, Standards, and Fees.**

Purpose and summary of proposed rule amendments:

The purpose of the proposed rule is to:

- (1) Change the tonnage assessment basis from short tons (2000 pounds) to metric tons (2204.6) to align with industry practice.
- (2) Delete many fee categories, simplify the fee schedule, and provide clarity to address customer concerns on the application of some fees.
- (3) Adjust fees to account for high volume operations and clearly define notification procedures to ensure services.
- (4) Increase current grain inspection fees where necessary to adjust for deleted fee categories and to cover the program's cost of doing business. The adjustments are necessary to allow the program to continue to provide the level of services that the industry expects and continue to comply with RCW 22.09.790, which requires that the department recover the costs it incurs for inspecting, weighing, and grading grain.
- (5) Since the proposed changes in language and format are quite extensive, the program decided to repeal chapter 16-239 WAC and replace it with chapter 16-240 WAC. **With the exception of the fee increases and a new service option, applicant assisted official railcar sampling, no new requirements are contained in chapter 16-240 WAC.** The requirements in chapter 16-240 WAC are the same as those in chapter 16-239 WAC; they have simply been rewritten and reformatted to improve the rule's clarity.

Reasons for supporting proposed rule amendments:

- (1) The fee increases are necessary to comply with RCW 22.09.790. They help offset increased operational costs incurred in providing program services and help maintain operating reserves appropriate for a program supported entirely by user fees.
- (2) The rewriting of the rule in clear and readable language within the context of a user-friendly format is the result of the department's on-going rule review mandated by Executive Order 97-02. Changes in language and format have been made to comply with the Executive Order's clarity criteria. In addition, rewriting the rule was undertaken to comply with RCW 34.05.220(5), which states: "To the extent practicable, any rule proposed or adopted by an agency should be clearly and simply stated, so that it can be understood by those required to comply".

Short explanation of the proposed rule, its purpose, and anticipated effects:

- (1) Chapter 16-240 WAC is a rewrite of the current chapter 16-239 WAC in plain English wherever possible. With the exception of the increase in fees, no requirement in the current chapter 16-239 WAC has been changed. It is anticipated that the new, clearly written rule will result in:
 - Better understanding of grain inspection rule requirements by industry;
 - Increased compliance with those requirements by industry; and
 - Better enforcement of those requirements by program staff.
- (2) In the new chapter, the rule sections contained in chapter 16-240 WAC have been rearranged into a more logical sequence, retitled to reflect section content, and rewritten so they are easier to read and understand.
- (3) Chapter 16-240 WAC reflects changes in user fees beyond the OFM fiscal growth rate factor for fiscal year 2006, effective July 1, 2005. It is anticipated that these adjustments in hourly and unit fees will provide the program with sufficient revenue to comply with RCW 22.09.790 and continue to provide the industry with the level of service that it requires.
- (4) Fees and rates in chapter 16-240 WAC are presented using a tabular format as was used in chapter 16-239 WAC.

Description of changes to specific rule sections:

A comparison between chapters 16-239 and 16-240 WAC may be found at www.agr.wa.gov.

Summary of Fee Changes—Domestic

Hourly Rates for services provided by the Grain Inspection Program—Domestic

Service	Current Rate	Proposed Rate
1. Straight time hourly rate	\$29.50	\$30.00
2. Overtime hourly rate	\$7.70	\$15.00
3. Scale Authorization hourly rate Applies to scales operating under USDA, GIPSA authority. Personnel from the QAQC Laboratory provide this service.	\$39.00	\$50.00
4. Service cancellation fee, per employee Replaces some occasions currently cited as four-hour minimum standby fee.		\$150.00

Services provided under the United States Grain Standards Act—Domestic

Service	Current Rate	Proposed Rate
1. Submitted samples The new rate does not charge for barley dockage shown to tenths on the certificate. Canola submitted samples reduced from \$15.75 to \$9.00.	\$8.50	\$9.00
2. Re-inspections based on file sample Canola re-inspections reduced from the hourly rate to \$9.00	\$10.00	\$9.00
3. Railcars No change in probe sampling of railcars.	\$26.50	\$26.50
4. Applicant assisted official railcar sampling New service: The reduced rate would apply when the applicant provides personnel to assist WSDA personnel in the probe sampling process. The service would be considered officially sampled and result in a white certificate.	N/A	\$17.00
5. Protein analysis	\$6.90	\$7.00
6. Protein only or protein re-inspection Fees reduced to the match the original analysis rate.	\$9.25	\$7.00
7. Additional non-grade determining factors	\$2.75	\$3.00

Services provided under the Agricultural Marketing Act—Domestic

Service	Current Rate	Proposed Rate
1. Submitted samples Dockage breakdown is included in the proposed inspection fee of \$19.00. In the current schedule, dockage breakdown is provided as an additional factor at \$2.75 per determination.	\$15.75	\$19.00
2. Bagged commodities, per hundredweight The proposed rate equates to \$4.32 for a 480-bag container lot or \$12.60 for a 1400-bag railcar lot.	\$0.071	\$0.080
3. Sample and inspect railcars Currently, the hourly rate of \$29.50 applies to bulk commodities as they are generally presented as single unit railcars that require at least an hour to sample, inspect, and certify. The \$26.50 railcar fee applies when cars are presented in multiple. Under the new rule, in most instances, the proposed net increase is \$0.50 per railcar.	26.50/\$29.50	\$30.00
4. Additional non-grade determining factors Applies to any requested additional factors except for dockage breakdown.	\$2.75	\$3.00
5. Falling Number analysis Includes liquefaction number, on request.	\$14.25	\$15.00

Services provided under Washington State rules—Domestic

Service	Current Rate	Proposed Rate
1. Submitted sample Primarily applied for Buckwheat analysis under WSDA standards.	\$8.44	\$9.00
2. Sample pick up fee This service is provided during harvest on Program established routes from the Pasco and Spokane offices.	\$0.66	\$0.85
3. Phytosanitary certification The current fee schedule provides for the \$7.50 certificate preparation fee plus at least one-half hour at the hourly rate of \$29.50 to accomplish the research necessary to issue the certificate. The hourly rate is assessed in one-half hour increments. Most phytosanitary certificates are issued at a fee of \$22.25 (one-half of \$29.50 plus \$7.50).	\$7.50/\$22.75	\$25.00
4. Mileage (effective January 1, 2005) The proposal would change the mileage assessments from door to door for all services provided away from the inspection office to assessment of mileage only for those locations beyond 10 miles from the inspection office. This change eliminates the burden of tracking mileage in small increments. Locations beyond 10 miles will continue to pay door-to-door mileage assessments.		\$0.405

Summary of Fee Changes—Export

Hourly Rates for services provided by the Grain Inspection Program—Export

Service	Current Rate	Proposed Rate
1. Straight time hourly rate	\$29.50	\$30.00
2. Overtime hourly rate	\$7.70	\$15.00
3. Scale Authorization hourly rate Applies to scales operating under USDA, GIPSA authority. Personnel from the QAQC Laboratory provide this service.	\$39.00	\$50.00
4. Service cancellation fee, per employee Replaces some occasions currently cited as four-hour minimum standby fee and adds language to address cancelled vessel inspection services.		\$150.00

Services provided under the United States Grain Standards Act—Export

Service	Current Rate	Proposed Rate
	(Short)	(Metric)
1. Barges, per ton (no change)	\$0.138	\$0.152
2. In, Out, or Local		\$0.150
3. Vessels, first 2,500,000 metric tons	\$0.142	\$0.20
4. Vessels, 2,500,001 to 4,000,000 metric tons	\$0.131	\$0.15
5. Vessels, 4,000,001 to 5,500,000 metric tons	\$0.128	\$0.10
6. Vessels, over 5,500,000 metric tons The proposed vessel tonnage breakpoint fees would be assessed for metric ton volumes exported by a facility during a fiscal year. Under the proposed rate, additional factors on the load order are included in the tonnage rate.	\$0.120	\$0.05
The tonnage rates and breakpoints were adjusted to balance fee categories that are proposed for elimination or reduction. The change in tonnage assessments would result in an increase of 7.6 percent if the volumes handled in the 2004 fiscal year were duplicated.		

<p>The first breakpoint of 2,500,000 metric tons equates to 2,755,750 short tons and the associated \$0.20 per metric ton equates to a rate of \$0.181 per short ton.</p> <p>The second breakpoint of 2,500,001-4,000,000 metric tons equates to 2,755,751-4,409,200 short tons and the associated \$0.15 per metric ton equates to \$0.136 per short ton.</p> <p>The third breakpoint of 4,000,001 to 5,500,000 metric tons equates to 4,409,201-6,062,650 short tons and the associated \$0.100 per metric ton equates to \$0.091 per short ton.</p> <p>The fourth breakpoint of over 5,500,000 metric tons equates to over 6,062,650 short tons and the associated \$0.050 per metric ton equates to \$0.045 per short ton.</p>		
7. Sample, inspect, weigh container	\$16.80	\$22.00
8. Submitted sample	\$8.50	\$9.00
9. Protein in conjunction with grade	\$6.90	\$7.00
<p>10. Vessel stowage examination or reinspection</p> <p>Under current rates, an examination of a seven-hold vessel at midstream would total \$247.30 (basic \$134.50 + two-hour minimum \$29.50 + \$29.50 plus extra holds + \$26.90 + \$26.90 = \$247.30) during regular office hours. Under current rates, an additional four-hour minimum + \$118.00 would apply if the service were provided on a Saturday, Sunday, or holiday. The proposed rate is a flat fee plus travel en route and return only, overtime, and mileage, if applicable. A service cancellation fee would be applied if applicable.</p>		\$300.00
11. Other stowage examination services	\$9.00	\$9.00

Services provided under the Agricultural Marketing Act—Export

Service	Current Rate	Proposed Rate
<p>1. Falling number determination</p> <p>Under the proposed rule, includes liquefaction number on request</p>	\$14.25	\$15.00